STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RYAN-EVERETT GOBRICK,

Defendant-Appellant.

UNPUBLISHED
December 21, 2021

No. 352180
Kent Circuit Court
LC No. 18-005805-FH

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Following a bench trial, defendant, Joseph Ryan-Everett Gobrick,[1] was convicted of three counts of child sexually abusive activity, MCL 750.145c(2), and one count of using a computer to

[1] Although the parties referred to defendant as "Mr. Gobrick" during the trial court proceedings, defendant's appellate brief indicates that defendant identifies as female and prefers to be referred to using the nonbinary pronouns they and them. The prosecution respectfully obliged defendant's request by using the they/them pronouns in its appellee brief and at oral argument. Although this Court does not yet have an official policy in regard to the use of preferred pronouns, the Merriam-Webster Dictionary accepts the use of "they" to refer to a single person whose gender identity is nonbinary. Merriam-Webster Dictionary, *they* <https://www.merriam-webster.com/dictionary/they> (accessed November 23, 2021). This usage is also now accepted by the APA style guide and other style manuals. American Physiological Association, *Singular "They"* <https://apastyle.apa.org/style-grammar-guidelines/grammar/singular-they> (accessed November 23, 2021); Charles & Myers, *Evolving They*, 98 Mich B J 38, 39 (June 2019), available at <http://www.michbar.org/file/barjournal/article/documents/pdf4article3680.pdf>. In the June 2019 issue of the Michigan Bar Journal, the authors of the "Plain Language" column *Evolving They* urge attorneys, as wordsmiths, to embrace the use of "they" as a singular pronoun to avoid clumsy instances of "he or she" and to respect those who prefer a gender-neutral pronoun. *Evolving They*, 98 Mich B J at 38. See also Heidi K. Brown, *We Can Honor Good Grammar and Societal Change Together*, ABA J (April 1, 2018), available at

commit a crime, MCL 752.796; MCL 752.797(3)(f). The trial court sentenced defendant to a prison term of 10 to 20 years for each offense, to be served concurrently. Defendant appeals of right, claiming the trial court erred by granting their request for self-representation and by allowing a witness to provide expert testimony without first qualifying that witness as an expert under MRE 702. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In March 2018, two Grand Rapids Police officers went to a home on Pine Avenue to conduct a welfare check on DB, a 17-year old girl from Ohio who had been reported missing and endangered because of her youth. Defendant answered the door and allowed the officers to check on DB. Apparently satisfied that DB was willingly present,[2] one of the officers spoke with defendant, who was in the living room seated before a computer. The officer noticed that the screensaver had explicit "cartoons" of young "[m]ales and females having sex."

Based on the observations of the police officers during the welfare check, Detective Demetrios James Vakertzis, with the Family Services Unit of the Grand Rapids Police Department and the Internet Crimes Against Children Michigan State Police (ICAC) Task Force, visited defendant's home and explained why he was there. Defendant willingly let him in and informed the detective that there were images of child anime, child pornography cartoons or cartoons of children being raped on the computer screen, and that it is not against the law. While the detective agreed that such animations were not illegal, he expressed concern that there might be also be other content, such as child pornography or child sexually abusive material (CSAM), on the computer. Equipped with this and other information, Detective Vakertzis obtained a warrant to search defendant's home. Defendant confirmed their ownership of the subject desktop computer with multiple hard drives, and that no one else had access to or used it. Defendant advised the detective that they are transgender, and went by the name "Lynn Kilroy," which was the username for the computer. Defendant also assisted Detective Vakertzis in operating the computer, as it was running in the command prompt, which was "[t]he old black screen with the C, semi-colon." Defendant explained that they had worked with computers in the United States Navy. Upon a search of the computer, Detective Vakertzis found over 50 screenshots of "child pornography." Defendant was criminally charged.

Before trial, defendant's counsel requested an adjournment and a competency evaluation of his client. The Center of Forensic Psychology first evaluated defendant's competency to stand

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<https://www.abajournal.com/magazine/article/inclusive_legal_writing>. Like the prosecution, we choose to honor defendant's request as well. Thus, apart from references to the record that use the pronouns he/him, we use the they/them pronouns where applicable. All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic. Our use of nonbinary pronouns respects defendant's request and has no effect on the outcome of the proceedings.

[2] One officer testified to his understanding that DB returned to Ohio later on the same day of the wellness check.

trial, and the trial court later ordered a criminal responsibility evaluation. Defendant was determined to be competent to stand trial and not legally insane at the time of the alleged crimes.

The competency evaluation and criminal responsibility reports indicated that defendant self-reported a history of having multiple personalities, but that defendant "had control over both personalities, and was not bothered by his experiences, as the voices 'kept him company.' "[3] There is no indication that defendant's multiple personalities manifested themselves during the competency evaluation. However, in the criminal responsibility evaluation, defendant reported that although they had been a "young girl," they were "currently a feline" named " 'Kitten.' " Defendant reported that "Lynn" kept "Kitten" from " 'going crazy.' " The evaluator reported that defendant discussed an interest in viewing child pornography, which "resulted from his status as a young girl himself, adding that the only way he could visualize himself in pornographic sexual acts was to watch children engaged in sexual activities." The evaluator also noted that "[w]hen asked to provide his accounting of the currently-alleged offenses, despite redirection, the defendant repeatedly returned to arguing the legality versus illegality of cartoon versions of pornography—despite my repeated redirections to speak on the real-life images that were the crux of the current charges."

Before the bench trial began, defendant requested the right to self-representation. The trial court engaged in an extensive colloquy with defendant to make sure the decision was knowingly, intelligently, and voluntarily made, whereafter the court granted defendant's self-representation request.[4]

At trial, Detective Vakertzis testified about his search of defendant's computer through a forensic write blocker, which preserves as-is everything that is on the hard drive, and he found over 50 screenshotted images of child pornography. Defendant did not download the images; rather, defendant took a screenshot from a "Tor site." The screenshots showed the "Tor addresses" and other "website tabs" that defendant was browsing at the time the screenshot was taken. Detective Vakertzis testified that the "dark web," or the "Tor," was created by the United States Navy in the 1970s, and that it is not a "bad tool"; rather, it is just a "very encrypted internet service," meaning that "if someone gets on the dark web and goes to sites they don't want anyone to see, it's very hard for our forensic examiners and or any person to hack or . . . try and locate what you're looking at and where you're looking at." Detective Vakertzis testified that the "file path" indicated that the images he found were located under defendant's user profile on the computer, which as noted, was "Lynn."[5]

Four of the images found on defendant's computer were admitted as evidence at trial. Detective Vakertzis testified that the admitted screenshots were a fair and accurate representation

[3] This information was gleaned from defendant's records at the Kent County Correctional Facility.

[4] Defendant's counsel up to that point stayed involved as standby counsel.

[5] Detective Vakertzis offered to read the full file path in which the images were found, but stated that it was "very long and it would probably take a while to do that." Defendant did not object or solicit the information.

or sample of the evidence found on defendant's computer. He described one image as depicting a naked adult male who is having sexual intercourse with a prepubescent female, and her vagina is clearly visible. Another image depicts a prepubescent female lying on her back, spreading her legs, and exposing her vagina as well as her anus to the person taking the picture. A third image depicts a close-up of prepubescent female performing oral sex on an adult male penis. Detective Vakertzis testified that the last image was of a "prepubescent female who is masturbating an adult male's erect penis" and was from an "actual series." He explained that the National Center for Missing and Exploited Children (NCMEC) was a global data storage facility for child pornography that officers across the world sent into to help identify the child victims, and that the child in the image "is actually an identified child." The detective opined, based on his experience, that the images had not been manipulated, faked, or photoshopped; instead, they showed real children engaged in various sexual acts, as was true for the other additional screenshotted photographs not admitted into evidence.

Two letters written by defendant were also admitted at trial, one dated May 9, 2019, and the other dated August 16, 2019.[6] Detective Vakertzis testified that the May letter described defendant's creation and production of child pornography. In the May letter, defendant described making explicit videos with " 'Kathy,' " defendant's wife at the time of the charged offenses, and child pornography with "Jim" and "Louis;" while the letter mentioned DB, it also indicated that Louis had "decided he did not need her after all." Detective Vakertzis testified that in the August letter, defendant again admitted to "creating child pornography," specifically the images discussed at trial, but claimed the images were created by using a computer program similar to Photoshop, in which defendant combined pictures of children with adult pornography.

Defendant cross-examined Detective Vakertzis on whether he could tell if the screenshots had been knowingly saved by the user by asking whether viruses can cause malicious downloads. Detective Vakertzis responded that the data here was not saved accidentally; it was manually screenshotted, which requires the user to purposefully take a picture, or create another image of what is displayed on the computer screen. Defendant questioned the detective on the motive for screenshotting by getting him to concede that one can right-click on Tor and save an image. But Detective Vakertzis countered that doing so changes the hash value, and that someone who is involved in child pornography knows that every video and picture has a hash value, so if they get caught, a forensic examiner would know a completely separate hash from the original was created. Defendant took another approach by questioning Detective Vakertzis whether he had heard of "Google image search," which is capable of searching images that have been resized or otherwise altered, again in an apparent effort to question the idea that anyone would purposefully screenshot an image knowing there are other ways of being detected. Detective Vakertzis admitted that he did not know why anyone would screenshot an image, but that the child pornography images here were screenshotted by the user and put on the hard drive. Defendant questioned whether someone on Skype could send over a screenshot to an unwitting recipient, but Detective Vakertzis responded

[6] The transcript misidentifies the date of the August 16, 2019 letter. Defendant addressed the letters to the prosecutor, and it appears letters were also sent to Detective Vakertzis and the trial court.

that it would have "a completely different path," and here it could be taken from Skype, but a screenshot would still have to have been taken in order for it to end up on the hard drive.

The trial court found defendant guilty beyond a reasonable doubt of all four of the charged offenses. At sentencing, defendant again engaged in self-representation with standby counsel. This appeal followed.

II. SELF-REPRESENTATION

Defendant first argues that the trial court should not have granted their request for self-representation at trial because they were not competent to waive the right to counsel. Defendant further argues that, even if the waiver at trial was valid, they did not unequivocally waive the right to counsel at sentencing. We conclude that defendant validly waived the right to counsel at trial, but the trial court erred by not asking defendant to affirm their desire to continue self-representation at sentencing. However, defendant is not entitled to relief because they cannot establish prejudice.

Defendant never challenged the validity of the waiver of counsel in the trial court, so we review this issue for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Under the plain error rule, defendant must establish that "1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. Under the third prong, defendant must show that the error was prejudicial, meaning "the error affected the outcome of the lower court proceedings." *Id*. Reversal on the basis of plain error is only warranted "when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotation marks and citation omitted; alteration in original).

"The right of self-representation is secured by both the Michigan Constitution, Const 1963, art 1, § 13, and by statute, MCL 763.1. The right of self-representation is also implicitly guaranteed by the Sixth Amendment of the United States Constitution." *People v Dunigan*, 299 Mich App 579, 587; 831 NW2d 243 (2013). However, the right is not absolute. *Indiana v Edwards*, 554 US 164, 171; 128 S Ct 2379; 171 L Ed 2d 345 (2008). "[C]ourts *must* indulge every reasonable presumption against the waiver of the right to counsel." *People v Russell*, 471 Mich 182, 193; 684 NW2d 745 (2004).

To effectuate a valid waiver, the trial court must substantially comply with the three factors set forth in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976), and MCR 6.005(D). See *People v Willing*, 267 Mich App 208, 219-220; 704 NW2d 472 (2005). Under *Anderson*, 398 Mich at 367, first, "the request must be unequivocal." Second, "the trial court must determine whether defendant is asserting his right knowingly, intelligently and voluntarily." *Id*. at 368. Finally, the trial court must determine that "the defendant's acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court's business." *Id*. MCR 6.005(D) provides, in relevant part:

> The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

> (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
>
> (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

MCR 6.005(E) requires that the trial court reaffirm a defendant's waiver of the right to counsel at each subsequent proceeding.

A. SELF-REPRESENTATION AT TRIAL

Defendant does not take issue with the fact that the trial court properly complied with the first and third *Anderson* factors, as well as MCR 6.005(D). Rather, defendant argues that they were not competent to waive the right to counsel at trial, and therefore, under the second *Anderson* prong, the wavier was not knowingly, intelligently, and voluntarily made. We disagree.

"A defendant may not waive his or her right to counsel if his or her mental incompetency renders him or her unable to understand the proceeding and make a knowing, intelligent, and voluntary decision." *People v Brooks*, 293 Mich App 525, 542; 809 NW2d 644 (2011), vacated in part on other grounds, 490 Mich 993 (2012). "In certain instances an individual may well be able to satisfy [the] mental competence standard [to stand trial], for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Edwards*, 554 US at 175-176 (alterations in original). Technical knowledge of legal matters is irrelevant to the validity of a defendant's exercise of the right to self-representation. *Id*, 554 US at 172. However, "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." *Id*. at 176 (quotation marks and citation omitted; alteration in original). Thus, "the Constitution permits a State to limit [a] defendant's self-representation right by insisting upon representation by counsel at trial—on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented." *Id*. at 174.

Here, defendant first argues that they did not have the competency to waive the right to counsel due to their belief that the prosecution concerned "producing cartoon child pornography, not for copying or reproducing photographs of real children." However, technical knowledge of legal matters is irrelevant to the question of whether defendant validly exercised the right to self-representation. See *id*. at 172.

Next, defendant claims a lack of mental capacity " 'to carry out the basic tasks needed to present [their] own defense without the help of counsel,' " *Brooks*, 293 Mich App at 542, quoting *Edwards*, 554 US at 175-176. The record belies defendant's contention. First, defendant was deemed competent to stand trial and capable of being held criminally responsible for the offenses at the time they were committed. Second, the record reveals that defendant ably carried out the basic tasks necessary to present a defense without the help of counsel. Although some of defendant's comments were extraneous or lacked legal merit, defendant exhibited attentiveness,

thought, and concentration throughout the trial. At the outset, defendant raised a reasonable but unsuccessful argument that the search warrant was invalid because the supporting affidavit listed an incorrect address on one of the pages.[7] During opening statements, defendant argued that the creation of pornographic drawings and computer animations is protected by the right to free speech and self-expression, and described it as "artwork."

When cross-examining Detective Vakertzis, defendant asked a series of good questions designed to challenge the detective's ability to prove that the over 50 screenshots of child pornography he found on defendant's computer were intentionally or knowingly saved, exploring whether they could be downloaded inadvertently, or placed there by others during a Skype call or due to malware.[8] Defendant also explored with the detective the various disincentives of someone who is technologically savvy, and who wishes to avoid detection, to want to take a screenshot. During closing argument, defendant claimed that the letters that had been admitted into evidence were purposefully written in such a way that they could easily be verified as false, that defendant only admitted in the letters to making photo-realistic images, that the images at issue at trial could have been downloaded unintentionally by software, not defendant, that there is no way to prove that defendant took the screenshots, that defendant did not screenshot images, and that to the extent defendant was being prosecuted for photo-realistic images, it was a violation of defendant's right to free speech.

Overall, defendant did not exhibit "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, [or] other common symptoms of severe mental illnesses" to indicate that defendant was incapable of self-representation. *Edwards*, 554 US at 176 (quotation marks and citation omitted; first alteration in original). To the contrary, defendant was able " 'to carry out the basic tasks needed to present [their] own defense without the help of counsel.' " *Brooks*, 293 Mich App at 542, quoting *Edwards*, 554 US at 175-176. Therefore, defendant is not entitled to a new trial on the basis that the waiver was invalid.

B. SELF-REPRESENTATION AT SENTENCING

Defendant argues that even if the initial waiver at trial was valid, the trial court failed to comply with MCR 6.005(E)(1) at sentencing. MCR 6.005(E) provides, in relevant part:

> If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing

[7] Defendant also had the presence of mind to object to the admission of the four photographs during Detective Vakertzis's testimony, again raising the issue as to the validity of the search warrant.

[8] As further evidence of defendant's mental capacity for self-representation, the record indicates that defendant was taking notes during the direct examination of Detective Vakertzis in preparation to cross-examine him.

> right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings
>
> (1) the defendant must reaffirm that a lawyer's assistance is not wanted . . . .

At the beginning of defendant's sentencing hearing, the attorney who had previously served as defendant's counsel and acted as standby counsel at trial commented, "I'm not sure if I'm the attorney of record or not." The court noted that defendant had waived the right to counsel at trial and asked the attorney to continue to play the role of standby counsel at sentencing. The trial court then remarked: "Clearly [defendant] wants to handle this on his own. And he has a right to do that." But there is no indication in the record as to why the trial court made that conclusion. And defendant did not reaffirm that a lawyer's assistance was not wanted at this subsequent proceeding. See MCR 6.005(E)(1). Therefore, we agree with defendant that the trial court plainly erred by failing to comply with MCR 6.005(E)(1). However, defendant is not entitled to resentencing because the error did not affect their substantial rights.

Although defendant contends that the lack of counsel was prejudicial because they did not have the opportunity to read the presentence investigation report (PSIR), defendant chose to waive this issue.[9] Specifically, defendant claimed that they had been unable to "thoroughly" review the PSIR and requested a postponement. The trial court found no basis for postponement, but offered to take a break in the proceedings and handle other cases in order to give defendant additional time to review the report. Defendant chose instead to proceed. In any event, defendant does not identify any errors in the PSIR that impacted the sentence.

Defendant also claims to be prejudiced by a lack of counsel because the court issued a sentence at the high end of the guidelines range, which defendant attributes to the failure to present mitigating evidence and defendant's making "inflammatory" comments at sentencing. After defendant's statement,[10] the following exchange transpired:

> *The Court*. All right. Well, thank you for that, [defendant]. The evidence at trial was very strong. The testimony clearly established that there were a number of images that constituted child sexually abusive material. And that they could be attributed, and we heard expert testimony, to [defendant].

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[9] The Michigan Supreme Court has recognized the difference between waiver and forfeiture. Waiver is the "intentional relinquishment or abandonment of a known right," while forfeiture is the failure to timely assert a right. *Carines*, 460 Mich at 763 n 7 (quotation marks and citation omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotation marks and citations omitted).

[10] Defendant argued that the letters admitted into evidence at trial were written so as to be easily proven as false, that images may look real but can be forged, that defendant is not internet savvy as was implied at trial, and that defendant does not make child pornography because defendant is an eight-year old girl.

> There was testimony about the dark web and [defendant's] ability based upon having worked in the Navy previously to potentially have an understanding of how to get to that. And there was also testimony that at least one of the images that was found that was placed there by [defendant] was a well-known girl whose image has been distributed throughout the world, I think, the testimony was.
>
> So, in that sense there is also a very real victim who was a little girl who was, in fact, posed entirely inappropriately and whose image has been circulated. And [defendant] has also participated in continuing the circulation of that. So, this isn't just virtual stuff. This is also real people that are being harmed.
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> [Defendant] ma[d]e a number of . . . [F]irst [A]mendment arguments that he has the right to be able to obtain any information he wanted and disseminate any information that he wanted. And—and really did not specifically deny being responsible for the images but rather made arguments as to why he believed there is nothing wrong with the images. I'm not here to pass moral judgment but under the law, that is illegal.
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> *Defendant*. Under the law it was—
>
> *The Court*. Excuse me, sir. I gave you a chance. Thank you very much. And—
>
> *Defendant*. Just reopen Auschwitz.
>
> *The Court*. So—so—excuse me.
>
> *Defendant*. Under the law Auschwitz was illegal. What you're doing here is wrong. This is the way Auschwitz was.
>
> *The Court*. Thank you, [defendant]. That's a rather bizarre and inappropriate metaphor but I'll go with it. And so, the reality is that [defendant] not just engaged in this conduct but based upon everything he said and done [sic], including bragging about what he was drawing in his cell,[11] that he, obviously, doesn't think that child sexually abusive material is wrong either to create it or disseminate it. And that is not what Michigan law says.

The trial court sentenced defendant to 10 to 20 years for each conviction, which was at the high end of the calculated minimum guidelines range of 78 to 130 months.

There is no indication in the above exchange that the trial court decided to sentence defendant at the high end of the guidelines range because they failed to produce mitigating

[11] At trial, during opening statements, defendant stated, "I have on my person right now a dozen of pieces of art. . . . One is made on [Kent County Correctional Facility] stationary and labeled raping babies in Kent County jail. At least 10 more share the same catchy slogan."

evidence or made a reference to the Auschwitz concentration camp. Rather, the trial court stated, "That's a rather bizarre and inappropriate metaphor but I'll go with it." The trial court concluded that based upon everything defendant had said and done, including bragging about drawing child sexually abusive images in jail, defendant does not think it is wrong to either create or disseminate child sexually abusive material. Reversal on the basis of plain error is only warranted "when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Carines*, 460 Mich at 763. Defendant has not established that the trial court's error was prejudicial, meaning that it affected the outcome of the lower court proceedings. *Id*. Thus, defendant is not entitled to resentencing.

III. LAY VERSUS EXPERT TESTIMONY

Finally, defendant argues that the trial court plainly erred by admitting Detective Vakertzis's testimony without first qualifying him as an expert under MRE 702. Because defendant did not object to Detective Vakertzis's testimony at trial, we review defendant's claim for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

MRE 701, which governs the admission of lay opinion testimony, provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

MRE 702, which governs the admission of expert testimony, provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Opinion testimony from a lay witness "do[es] not involve highly specialized knowledge, and [is] largely based on common sense." *People v McLaughlin*, 258 Mich App 635, 658; 672 NW2d 860 (2003). "[T]he interplay between MRE 701 and MRE 702 is somewhat unclear when a police officer provides testimony based on his or her training and experience." *People v Dixon-Bey*, 321 Mich App 490, 497; 909 NW2d 458 (2017), citing *People v Dobek*, 274 Mich App 58, 77; 732 NW2d 546 (2007).

In this case, the prosecution did not list Detective Vakertzis as an expert or move to qualify him as an expert witness, and the trial court never made a finding that Detective Vakertzis was qualified as an expert. Therefore, the trial court presumably allowed Detective Vakertzis to testify

as a lay witness under MRE 701, and it was not necessary for his testimony to meet the requirements of MRE 702.

However, were we to agree that Detective Vakertzis's testimony ventured into what would be considered expert testimony, defendant cannot establish prejudice because his testimony would have been properly admitted under MRE 702. Even defendant admits that Detective Vakertzis had "extensive training and experience in computer forensics," and the record reflects that he had significant experience and training in investigating cases involving child sexually abusive material, including more specific training relevant to this case, such as the dark web.

Defendant contends that Detective Vakertzis's testimony would not have passed muster under MRE 702 because it was "wholly speculative" and circular in concluding that because screenshots were found on defendant's computer, defendant must have taken the screenshots. But defendant oversimplifies Detective Vakertzis's testimony. In response to defendant's question whether the images could have been automatically downloaded by the Tor or sent by a third-party through e-mail or Skype, Detective Vakertzis testified that if someone clicked on an image, "sometimes, yes, the AppData will download that." However, the detective emphasized that the images in this case were manually screenshotted and saved on the computer hard drive. Detective Vakertzis testified that even if the images had been sent over Skype, by screenshotting it, defendant "created another child pornography image of an existing one, and it was saved to their computer." Detective Vakertzis further testified that had the images been sent through e-mail or Skype, the file path would have been different. The file path here indicated that the images were located under defendant's user profile on the computer, which in this case was "Lynn." Defendant also told Detective Vakertzis that no one else accessed or used the computer.

Detective Vakertzis's testimony established that the images were not automatically downloaded, and that regardless of how the user obtained the images, the user took screenshots and intentionally saved them to the computer. In the screenshots, one can see the "Tor addresses" and the numerous different "website tabs" that the person taking the screenshot was browsing when the screenshot was taken. It is clear that no one else besides defendant took the screenshots. And defendant admits that if they "took a screenshot of the open page, as Mr. Vakertzis claimed he had determined, [defendant] arguably made, copied, or reproduced CSAM within the meaning of MCL 750.145c(2), and was guilty of a twenty year felony." Defendant has failed to show that Detective Vakertzis's opinion was not the product of reliable principles and methods. See MRE 702. Additionally, defendant does not contend that the testimony lacked "sufficient facts or data" or that Detective Vakertzis failed to "appl[y] the principles and methods reliably to the facts of the case." *Id*. Because Detective Vakertzis's testimony would have been properly admitted under MRE 702, defendant cannot establish any prejudice.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering